

# **EXHIBIT 40**

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1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MINNESOTA

3

4 IN RE PORK ANTITRUST	Civil No.
5 LITIGATION	18-1776 (JRT/HB)
6 -----	
7 This document Relates to:	
8 All Actions	

9

10           The videotaped deposition of ROBERT RUTH,  
11 called by the Plaintiffs for examination, reported  
12 stenographically by Cynthia J. Conforti, License  
13 No. 084-003064, at Kirkland & Ellis LLP, 300 North  
14 LaSalle Street, Chicago, Illinois, commencing at  
15 the hour of 8:03 a.m. CDT on the 13th day of May,  
16 2022.

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the loop, call me in if he needed me, always tell  
me what he was planning on negotiating, okay, and  
get my approval before he'd go out and speak to  
the producers.

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BY MS. STUPAR:

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Q So based on your understanding of  
negotiations that Dan had through his reports back  
to you and your own experience negotiating  
producer contracts in Coldwater, how would you  
characterize the negotiations between Clemens and  
its producers?

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MR. WHEELER: Object to the form and  
beyond the scope.

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THE WITNESS: Well, I think there's a  
misconception that the processor has all the power  
in the negotiations. When -- they don't realize  
that the producers have quite a bit of power in  
the negotiations. You know, the further -- the  
further west you go, the more power that they have  
in the negotiations because there's multiple  
plants, you know, that they have to negotiate  
with.

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So, you know, processing plants don't run  
without pigs going through them, and so for a  
processor to lose a big contract with an

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independent producer, that hurts, and it's very  
difficult for them to fill, you know, that hole,  
you know, with different pigs. They've got to go  
through that whole process again of negotiations  
and so on and so forth.

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So I think, people, you know, overplay.

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You know, I mean, obviously, the producer needs  
the processor as well, but there's -- there's  
equal power in those negotiations because they're  
both dependent on each other.

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BY MS. STUPAR:

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Q Based on your experience, who decides in  
the contract how many hogs will be produced?

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MR. WHEELER: Object to the form.

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THE WITNESS: Again, that's negotiated,  
you know, in the contract. Producer usually just  
comes and says, hey, I've got 120,000 hogs a year  
or whatever the number is, that I've got  
available, you know, to market to you. You know,  
are you -- are you interested. And if you are,  
what price are you willing to give me for those  
pigs?

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Sometimes the processor comes back and  
says, hey, I really need 150. Can you give  
me -- you know, I mean to say there's that type of

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negotiation too.

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Because another misnomer is that producers  
are tied to one packer. Again, the further west  
you get, the more you've got producers selling to  
multiple packers as well, okay, which kind of  
keeps the field more level for them in their  
negotiations because packers know that they've got  
other places to go with their animals.

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BY MS. STUPAR:

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Q So let's say that I'm a hog producer. I  
have a contract with Clemens to sell 5,000 hogs a  
week. If I increase my production beyond that,  
would Clemens buy the excess product?

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MR. WHEELER: Object to the form.

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THE WITNESS: So more than -- more than  
likely, yes. Some of that depends. I mean, if  
they said, okay, tomorrow I got 5,000 more animals  
that I'll start sending you tomorrow, probably  
couldn't do that right away. We would say no, we  
need a plan to work them in, you know, to our  
harvest schedule, okay? So there is some timing  
there -- not to get too technical, but there is  
some timing it takes. But, typically, somebody  
comes and says I've got that, we could say, okay,  
October the 1st, start bringing them.

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BY MS. STUPAR:

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Q Well, if you actually could get technical.

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If I came to you and said, hey, I've got

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5,000 extra hogs coming to you tomorrow, why

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couldn't Clemens just say "okay, great"?

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A So, again, capacities of the plant and where we're at and those sort of things, if we're at full capacity, we'd need to figure out how we could squeeze a few more pigs in, you know, either maybe longer hours, a Saturday harvest every now and then, and those sorts of things before we could, you know, take them. If we have the capacity, we take them right away, okay?

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Q Can -- and can you explain what you mean by "capacity"?

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A Yeah, it's the rated capacity of the plant. I mean, we talked a couple of times about 10,000 a day, okay?

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So our Hatfield facility has a rating for the number of animals that -- that it harvests. I'm not -- and we keep improving that all the time.

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I'm not exactly sure where it's at today. I think it might be around 11,000 a day that we can harvest. So once you get to that, you know,